

*AMENDED PROPOSED CHARGING LETTER*

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

New Brunswick Scientific Co., Inc.  
44 Talmadge Road  
Edison, New Jersey 08817

Attention: William J. Dunne  
Vice President  
Sales & Service

Dear Mr. Dunne:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that New Brunswick Scientific Co., Inc. (“New Brunswick Scientific”) of Edison, New Jersey, has committed 12 violations of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the “Act”).<sup>2</sup> Specifically, BIS charges that New Brunswick Scientific committed the following violations:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred from 1999 to 2001. The Regulations governing the violations at issue are found in the 1999 to 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2001)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp., p. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

**Charge 1 15 C.F.R. § 764.2(a) - Export to the Directorate of Purchase and Stores Without the Required License**

On or about March 13, 1999, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99, from the United States through the United Kingdom to the Directorate of Purchase and Stores, Department of Atomic Energy (DPS) in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. Each transaction is described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference.

**Charge 2 15 C.F.R. § 764.2(a) - Failing to File a Shipper's Export Declaration**

In connection with the export referenced in Charge 1 above, New Brunswick Scientific exported items subject to the Regulations valued at over \$2,500 to DPS in India without filing a Shipper's Export Declaration as required by Part 758 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

**Charge 3 15 C.F.R. § 764.2(a) - Failing to File a Shipper's Export Declaration**

On or about, March 28, 2000, New Brunswick Scientific exported a deep freezer, an item subject to the Regulations valued at over \$2,500 to India, without filing a Shipper's Export Declaration as required by Part 758 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

**Charges 4-5 15 C.F.R. § 764.2(a) - Exports to Taiwan Without the Required Licenses**

On or about July 7, 2000, and, on or about January 26, 2001, New Brunswick Scientific exported fermentors, items subject to the Regulations and covered under Export Control Classification Number (ECCN) 2B352, from the United States to Taiwan without obtaining licenses from the Department of Commerce as required by Section 742.2 of the Regulations. In doing so, New Brunswick Scientific committed two violations of Section 764.2(a) of the Regulations. See Schedule A.

**Charges 6-7 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper's Export Declarations**

On or about July 7, 2000 and on or about January 26, 2001, in connection with the exports referenced in Charges 4 and 5 above, New Brunswick Scientific submitted to the U.S. Government Shipper's Export Declarations, export control documents as defined in Part 772 of the Regulations, for each shipment that represented that the exports were eligible for export as NLR (no license required) when, in fact, the exports required licenses from BIS. In doing so, New Brunswick Scientific committed two violations of Section 764.2(g) of the Regulations. See Schedule A.

**Charge 8 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without the Required License**

On or about July 25, 2000, New Brunswick Scientific exported software, an item subject to the Regulations and designated as EAR99, from the United States to DPS in India, a government organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

**Charge 9 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without the Required License**

On or about February 27, 2001, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99, from the United States to DPS in India, a government organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

**Charge 10 15 C.F.R. § 764.2(a) - Export to India Without the Required License**

On or about December 22, 2000, New Brunswick Scientific exported a fermentor, an item subject to the Regulations and covered under ECCN 2B352, from the United States to India without obtaining a license from the Department of Commerce as required by Section 742.2 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

**Charge 11 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper's Export Declarations**

On or about January 5, 2001, in connection with the export referenced in Charge 10 above, New Brunswick Scientific submitted to the U.S. Government a Shipper's Export Declaration, an export control document as defined in Part 772 of the Regulations, that represented that the exports were eligible for export as NLR (no license required) when, in fact, the export required a license from BIS. In doing so, New Brunswick Scientific committed one violation of Section 764.2(g) of the Regulations. See Schedule A.

**Charge 12 15 C.F.R. § 764.2(a) - Export to Israel Without the Required License**

On or about August 24, 2001, New Brunswick Scientific exported a fermentor, an item subject to the Regulations and covered under ECCN 2B352 from the United States to Israel without obtaining a license from the Department of Commerce as required by Section 742.2 of the Regulations. In doing so, New Brunswick Scientific committed one violation of Section 764.2(a) of the Regulations. See Schedule A.

Accordingly, New Brunswick Scientific is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of up to \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If New Brunswick Scientific fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If New Brunswick Scientific defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to New Brunswick Scientific. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

New Brunswick Scientific is further notified that it is entitled to an agency hearing on the record if New Brunswick Scientific files a written demand for one with its answer. (Regulations, Section 766.6). New Brunswick Scientific is also entitled to be represented by counsel or other

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<sup>3</sup> See 15 C.F.R. §6.4(a)(2) (2003).

New Brunswick Scientific Co., Inc.  
Proposed Charging Letter  
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authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should New Brunswick Scientific have a proposal to settle this case, New Brunswick Scientific or its representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, New Brunswick Scientific's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of New Brunswick Scientific's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Lairoid Street  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Lairoid Street is the attorney representing BIS in this case; any communications that New Brunswick Scientific may wish to have concerning this matter should occur through him. Mr. Street may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosure

# **SCHEDULE A**

**SCHEDULE OF VIOLATIONS  
EXPORTS BY  
NEW BRUNSWICK SCIENTIFIC CO., INC.**

<b>Charge No.</b>	<b>Export Date (on or about)</b>	<b>Commodity</b>	<b>Air Waybill No. or Bill of Lading No.</b>	<b>Invoice No.</b>	<b>Value of Commodity</b>	<b>Destination</b>
1-2	3/13/99	lab equipment	761 LHR 5110 6451	95893	\$6975	Directorate of Purchase and Stores, Department of Atomic Energy, India (DPS)
3	3/28/00	deep freezer	JFK001302	103270	\$4350	India
4, 6	7/07/00	fermentor	19500	104985	\$395,550	Taiwan
5, 7	1/26/01	fermentor	illegible	104985	\$483,450	Taiwan
8	7/25/00	software	057 EWR 65663732	228653	\$2637	DPS
9	2/27/01	lab equipment	055 EWR 24196270	235333	\$118,610	DPS
10, 11	12/22/00	fermentor	020-12/2 0643	108944	\$9802.50	India
12	8/24/01	fermentor	22264	241000	\$258,049	Israel

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
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New Brunswick Scientific Co., Inc. )  
44 Talmadge Road )  
Edison, New Jersey 08817 )  
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Respondent. )  
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ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified New Brunswick Scientific Co., Inc. (“New Brunswick Scientific”) of its intention to initiate an administrative proceeding against New Brunswick Scientific pursuant to Section 766.3 of the Export Administration Regulations (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the amended proposed charging letter issued to New Brunswick Scientific that alleged that New Brunswick Scientific committed 12 violations of the Regulations. Specifically, the charges are:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The alleged violations occurred from 1999 to 2001. The Regulations governing the violations at issue are found in the 1999 to 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2001)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

1. *One Violation of 15 C.F.R. § 764.2(a) - Export to the Directorate of Purchase and Stores Without the Required License:* On or about March 13, 1999, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99<sup>3</sup> to the Directorate of Purchase and Stores, Department of Atomic Energy (“DPS”) in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.
2. *One Violation of 15 C.F.R. § 764.2(a) - Failing to File a Shipper’s Export Declaration:* On or about March 13, 1999, New Brunswick Scientific exported lab equipment, items subject to the Regulations valued at over \$2,500, to DPS in India without filing a Shipper’s Export Declaration as required by Part 758 of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(a) - Failing to File a Shipper’s Export Declaration:* On or about, March 28, 2000, New Brunswick Scientific exported a deep freezer, an item subject to the Regulations valued at over \$2,500 to India without filing a Shipper’s Export Declaration as required by Part 758 of the Regulations.
4. *Two Violations of 15 C.F.R. § 764.2(a) - Exports to Taiwan Without the Required Licenses:* On or about July 7, 2000, and, on or about January 26, 2001, New Brunswick Scientific exported fermentors, items subject to the Regulations and

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<sup>3</sup> EAR99 is a designation for items subject of the Regulations but not listed on the Commerce Control List (15 C.F.R. Part 774).

classified under Export Control Classification Number (“ECCN”) 2B352, from the United States to Taiwan without obtaining licenses from the Department of Commerce as required by Section 742.2 of the Regulations.

5. *Two Violations of 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper’s Export Declarations:* On or about July 7, 2000 and on or about January 26, 2001, New Brunswick Scientific submitted to the U.S. Government Shipper’s Export Declarations, export control documents as defined in Part 772 of the Regulations, for two shipments that represented that the exports were eligible for export as NLR (no license required) when, in fact, the exports required licenses from BIS.
6. *One Violation of 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without Required License:* On or about July 25, 2000, New Brunswick Scientific exported software, an item subject to the Regulations and designated as EAR99, from the United States to DPS in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.
7. *One Violation of 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without the Required License:* On or about February 27, 2001, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99, from the United States to DPS in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the

Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.

8. *One Violation of 15 C.F.R. § 764.2(a) - Export to India Without the Required License:* On or about December 22, 2000, New Brunswick Scientific exported a fermentor, an item subject to the Regulations and classified under ECCN 2B352, from the United States to India without obtaining a license from the Department of Commerce as required by Section 742.2 of the Regulations.
9. *One Violation of 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper's Export Declarations:* On or about January 5, 2001, New Brunswick Scientific submitted to the U.S. Government a Shipper's Export Declaration, an export control document as defined in Part 772 of the Regulations, that represented that an export was eligible for export as NLR (no license required) when, in fact, the export required a license from BIS.
10. *One Violation of 15 C.F.R. § 764.2(a) - Export to Israel Without the Required License:* On or about August 24, 2001, New Brunswick Scientific exported a fermentor, an item subject to the Regulations and classified under ECCN 2B352 from the United States to Israel without obtaining a license from the Department of Commerce as required by Section 742.2 of the Regulations.

BIS and New Brunswick Scientific having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$51,000 is assessed against New Brunswick Scientific which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, New Brunswick Scientific will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to New Brunswick Scientific. Accordingly, if New Brunswick Scientific should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying New Brunswick Scientific's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the amended proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

A handwritten signature in black ink that reads "Julie Myers". The signature is written in a cursive style and is positioned above a horizontal line.

Julie L. Myers  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 30<sup>th</sup> day of August 2004.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
 )  
New Brunswick Scientific Co., Inc. )  
44 Talmadge Road )  
Edison, New Jersey 08817 )  
 )  
Respondent. )  
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, New Brunswick Scientific Co., Inc. (“New Brunswick Scientific”) and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup>

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The alleged violations occurred from 1999 to 2001. The Regulations governing the violations at issue are found in the 1999 to 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2001)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

WHEREAS, BIS has notified New Brunswick Scientific of its intention to initiate an administrative proceeding against New Brunswick Scientific, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued an amended proposed charging letter to New Brunswick Scientific that alleged that New Brunswick Scientific committed 12 violations of the Regulations, specifically:

1. *One Violation of 15 C.F.R. § 764.2(a) - Export to the Directorate of Purchase and Stores Without the Required License:* On or about March 13, 1999, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99<sup>3</sup> to the Directorate of Purchase and Stores, Department of Atomic Energy (“DPS”) in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.
2. *One Violation of 15 C.F.R. § 764.2(a) - Failing to File a Shipper’s Export Declaration:* On or about March 13, 1999, New Brunswick Scientific exported lab equipment, items subject to the Regulations valued at over \$2,500, to DPS in India without filing a Shipper’s Export Declaration as required by Part 758 of the Regulations.

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<sup>3</sup> EAR99 is a designation for items subject of the Regulations but not listed on the Commerce Control List (15 C.F.R. Part 774).

3. *One Violation of 15 C.F.R. § 764.2(a) - Failing to File a Shipper's Export Declaration:* On or about, March 28, 2000, New Brunswick Scientific exported a deep freezer, an item subject to the Regulations valued at over \$2,500 to India without filing a Shipper's Export Declaration as required by Part 758 of the Regulations.
4. *Two Violations of 15 C.F.R. § 764.2(a) - Exports to Taiwan Without the Required Licenses:* On or about July 7, 2000, and, on or about January 26, 2001, New Brunswick Scientific exported fermentors, items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 2B352, from the United States to Taiwan without obtaining licenses from the Department of Commerce as required by Section 742.2 of the Regulations.
5. *Two Violations of 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper's Export Declarations:* On or about July 7, 2000 and on or about January 26, 2001, New Brunswick Scientific submitted to the U.S. Government Shipper's Export Declarations, export control documents as defined in Part 772 of the Regulations, for two shipments that represented that the exports were eligible for export as NLR (no license required) when, in fact, the exports required licenses from BIS.
6. *One Violation of 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without Required License:* On or about July 25, 2000, New Brunswick Scientific exported software, an item subject to the Regulations and designated as

EAR99, from the United States to DPS in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.

7. *One Violation of 15 C.F.R. § 764.2(a) - Export to Directorate of Purchase and Stores Without the Required License:* On or about February 27, 2001, New Brunswick Scientific exported lab equipment, items subject to the Regulations and designated as EAR99, from the United States to DPS in India, an organization on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a license from the Department of Commerce as required by then Section 744.11 of the Regulations.
8. *One Violation of 15 C.F.R. § 764.2(a) - Export to India Without the Required License:* On or about December 22, 2000, New Brunswick Scientific exported a fermentor, an item subject to the Regulations and classified under ECCN 2B352, from the United States to India without obtaining a license from the Department of Commerce as required by Section 742.2 of the Regulations.
9. *One Violation of 15 C.F.R. § 764.2(g) - False or Misleading Representations as to Authority to Export on Shipper's Export Declarations:* On or about January 5, 2001, New Brunswick Scientific submitted to the U.S. Government a Shipper's Export Declaration, an export control document as defined in Part 772 of the

WHEREAS, New Brunswick Scientific agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over New Brunswick Scientific, under the Regulations, in connection with the matters alleged in the amended proposed charging letter.

2. The following sanction shall be imposed against New Brunswick Scientific in complete settlement of the violations of the Regulations set forth in the amended proposed charging letter:

- a. New Brunswick Scientific shall be assessed a civil penalty in the amount of \$51,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to New Brunswick Scientific. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of New Brunswick Scientific's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, New Brunswick Scientific hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the amended proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this

Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$51,000 civil penalty, BIS will not initiate any further administrative proceeding against New Brunswick Scientific in connection with any violation of the Act or the Regulations arising out of the transactions identified in the amended proposed charging letter.

5. BIS will make the amended proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

  
Julie Salcido  
Acting Director  
Office of Export Enforcement

Date: 8/24/2004

NEW BRUNSWICK SCIENTIFIC CO., INC.

  
William J. Dunne  
Vice President  
Sales & Service

Date: 8/19/04